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Federal Communications Commission
Washington, D.C. 20554

Docket 96-198

OCT 27 1998

IN REPLY REFER TO:
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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

The Honorable Paul D. Coverdell
United States Senate
200 Russell Senate Office Building
Washington, D.C. 20510-1004

Dear Senator Coverdell:

This is in response to your letter on behalf of your constituent, Ronald H. Vickery, regarding the Commission's implementation of Section 255 of the Communications Act (Section 255), added by the Telecommunications Act of 1996. Section 255 requires that telecommunications equipment manufacturers and service providers must ensure that their equipment and services are accessible to persons with disabilities, to the extent that it is readily achievable to do so. In adopting Section 255, Congress gave the Commission two specific responsibilities, to exercise exclusive jurisdiction with respect to any complaint filed under Section 255, and to coordinate with the Architectural and Transportation Barriers Compliance Board (Access Board) in developing guidelines for the accessibility of telecommunications equipment and customer premises equipment.

The Commission adopted a Notice of Inquiry in September 1996, initiating WT Docket 96-198 and seeking public comment on a range of general issues central to the Commission's implementation of Section 255. The Commission also adopted a Notice of Proposed Rule Making (NPRM) in April 1998, which sought public comment on a proposed framework for that implementation. The NPRM examined the Commission's legal authority to establish rules implementing Section 255, including the relationship between the Commission's authority under Section 255 and the guidelines established by the Access Board in February 1998. The NPRM further solicited comment on the interpretation of specific statutory terms that are used in Section 255, including certain aspects of the term "readily achievable," and the scope of the term "telecommunications services." In addition, the NPRM sought comment on proposals to implement and enforce the requirement that telecommunications equipment and services be made accessible to the extent readily achievable. The centerpiece of these proposals was a "fast-track" process designed to resolve many accessibility problems informally, providing consumers with quick solutions.

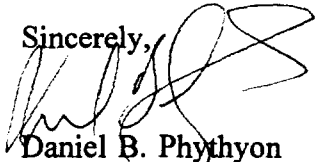
It is important to note that the Commission has not issued a final decision regarding any of the proposals suggested in the NPRM. The record in this proceeding closed on August 14, 1998, and the Commission staff is currently reviewing public comments.

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Since the passage of Section 255, the Commission has worked closely with the Access Board and with various commenters to design an implementation framework that best reflects the intent of Congress in adopting Section 255. The comments that your constituent submitted directly to the Commission have been included in the record of WT Docket 96-198, and will be carefully considered, along with the many other comments, before final action is taken on this critically important matter. I appreciate your constituent's input as a way of establishing as thorough and representative a record as possible on which to base final rules implementing Section 255.

Sincerely,

A handwritten signature in black ink, appearing to read "D. B. Phythyon", written over the printed name.

Daniel B. Phythyon
Chief, Wireless Telecommunications Bureau

PAUL D. COVERDELL
GEORGIA
CONFERENCE SECRETARY

United States Senate
WASHINGTON, DC 20510-1004

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*WTP
Docket
Tele Act 96
11305*

September 8, 1998

Ms. Lauren Belvin
Acting Director of Legislative Affairs
Federal Communications Commission
1919 M Street, N.W.
Suite 808
Washington, D.C. 20554

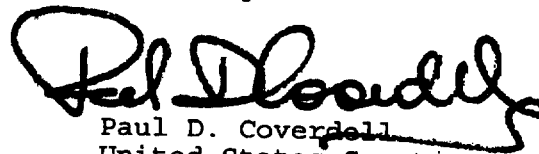
Dear Ms. Belvin:

Please find enclosed correspondence I received from a constituent. I would appreciate your review of this information in accordance with established policies and procedures. Upon completion of your review, please forward clarification of your findings to:

/ Anna Brumby
Office of Senator Paul Coverdell
United States Senate
Washington, DC 20510-1004

In the event my office may be of further assistance, please do not hesitate to contact Anna Brumby at (202) 224-5338. Thank you for your efforts in this matter, and I look forward to hearing from you soon.

Sincerely,


Paul D. Coverdell
United States Senator

PDC/apb

SEP 23 12 32 PM '98

Author: Ron Vickery <ron.vickery@ibm.net> at internet
Date: 7/15/98 3:10 PM
Priority: Normal
TO: senator coverdell at Coverdell-DC
Subject: Section 255 of the Telecommunications Act of 1996
July 15, 1998

To:
The Honorable Paul Coverdell
US Senate
200 Russell Senate Office Building
Washington, DC 20510

Subject: Section 255 of the Telecommunications Act of 1996

Reference:

1. Telecommunication Guidelines published in the Federal Register by the Access Board
2. NPRM Docket WT 96-198 issued by the FCC
3. My Comments on the subject Act and NPRM submitted on June 30, 1998 & Errata submitted on July 6, 1998

Dear Senator Coverdell,

I am asking for your assistance in communicating to the FCC that the mandates of section 255 of the Act should be viewed in a much broader perspective than indicated by the FCC's NPRM.

I am a person who experienced sudden and severe hearing loss at a critical time of my career. Because of my hearing loss, and subsequent activism, I have met many people with similar experiences and people with hearing loss from childhood. Although we, as hard of hearing people, have different times of the onset of hearing loss, and different degrees of hearing loss, we share many of the same frustrations in using telecommunications. The biggest frustration is that it does not have to be frustrating. We have technology that helps in many areas of our life and we believe the Telecommunications Act of 1996, section 255, intended to mandate the application of similar technologies and regulations to telecommunications.

The FCC has done a very thorough job of exploring issues associated with the Telecommunications Act of 1996. I am concerned, however, that it is misinterpreting the intent of the Act in three key areas:

1. The treatment of Interactive Voice Response systems

Viewed in the context of Section 255 of the Telecommunications Act I submit that an Interactive Voice Response systems is not an Informational Service but is an "Adjunct-to-Basic" service.

Interactive Voice Response systems have become a major stumbling block for many hard of hearing people and deaf people. Those of us who depend on voice communications cannot understand the pre-recorded statements well enough to make the correct keying response. People who depend on using Relay services find that Relay operators cannot type menu selections quick enough to negotiate the voice menu.

An Interactive Voice Response system is currently classified as an

Informational Service, and as such is not regulated under Section 255. This classification should be re-evaluated in light of the Act and moved to a classification that is regulated by the Act. I base this conclusion from two paragraphs from the NPRM:

Paragraph 37 in the NPRM says:

"The Act defines an "information service" as:
The offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications, and includes electronic publishing, but does not include any use of any such capability for the management, control, or operation of a telecommunications system or the management of a telecommunications service."

Paragraph 39 of the NPRM says,

"... The Commission found that such "adjunct-to-basic" services facilitated the establishment of a transmission path over which a telephone call may be completed, without altering the fundamental character of the telephone service."

If "Joe's Muffler Shop" uses an Interactive Voice Response system to answer its phone, that system does not fit the definition of Information Service. It is not offering any of the things listed in the definition. The service it offers is the replacement of worn out mufflers. I need to be able to call the shop just like anyone else. I need to complete a telephone call, which more accurately fits the definition of Adjunct-to-Basic service. I am prevented from using the phone and must go there in person.

It is not likely that "Joe's Muffler Shop" will use an Interactive Voice Response system. But many business and organizations do, such as health care providers, insurance companies, investment companies, banks, public utilities, hotels, theaters, manufacturers of products, law enforcement agencies, courts and a host of others. Many of these entities do not provide any means of contact except the telephone.

Section 255 of the Act clearly was meant to empower people with disabilities, to the fullest extent possible, to be able to conduct business with these entities. The FCC may have had a good reason to classify Interactive Voice Response systems as Informational Services before the Act went into effect, but now it does not.

I also note that several sections of the Guidelines and the NPRM indicate that companies engaged in telecommunications service, and companies marketing CPE must have product support centers that are usable by people with disabilities. Furthermore, I think companies that provide public accommodations as defined by the ADA would be required to have telephone facilities usable by people with disabilities. If this is the intention of the Act, then it precludes at least these kinds of companies from using an Interactive Voice Response system that does not have usable accessibility features.

Congress, the FCC, and the Access Board should diligently investigate this concern and work with disability groups and the telecommunications industry to find an acceptable solution. Re-classifying Interactive Voice Response systems to Adjunct-to-Basic service, or another more appropriate class, is the first step. Entities can arrange their Interactive Voice Response system to make recorded voice clearer, and provide options to use accessibility features.

2. The factors used in the determination of "readily achievable"

The FCC definition of the Readily Achievable gives too much latitude to CPE manufacturers. Opportunity cost, cost recovery, and market conditions should not be allowed as factors. It seems as if the FCC is treating Section 255 as commerce law. Congress should make it clear to the FCC that it is disability law.

3. Accessibility requirements, as currently proposed, do not provide accessibility for many people with severe hearing loss.

People with severe to profound hearing loss need an easy, universal way to connect peripheral equipment. The Guidelines do specify an output connector, but it is listed as a compatibility requirement. That fact excludes many people that need Section 255 the most. The Act says that CPE (Customer Premises Equipment) should be made accessible first, and if that is not readily achievable, then it should be made compatible. Since it is the goal that all CPE will conform to accessibility, and if this goal is met, then very little CPE will have to conform to compatibility and the requirement for an output connector will be missing. That would be a very serious outcome since today many of us find that using peripheral equipment is the only way to achieve access. We do this by purchasing adapters that allow connection to peripheral equipment, but my major concern is that the industry will evolve such that an adapter is not possible.

All the compatibility requirements are extremely important and, except for item (e) TTY Signal Compatibility, are not covered in any other way. For example, one compatibility requirement is that CPE must be operable with a prosthetic. If I used a prosthetic that would not operate a touch screen, which some CPE may have, I would not find any accessibility requirement in the Guidelines to cover my case. Accessibility, as currently defined, is not sufficient for many hard of hearing people.

I am asking that Congress directs the Access Board and the FCC to study the way it has divided features into accessibility requirements and compatibility requirements to solve this problem. One solution is to require an output connector in both groups. Another solution is to enlarge the requirements for accessibility to cover a wider range of disabilities.

For example, CPE should have a connector that is capable of both output and input, and could be rightly called an "Access Port." If all CPE had a universal Access Port we could mix and match all kinds of equipment and solve many problems hard of hearing and deaf people have with telecommunications. I think this concept would also extend to other disabilities.

I have listed many benefits an Access Port would provide in my comments to the FCC, one of which supports the concept of "Universal Design." I am only asking that Congress, the FCC, and the telecommunications industry use more imagination in what could be possible for people with disabilities. By doing that, telecommunication equipment and service would appeal to more people and be usable by more people, thereby reaching for the goal of Universal Design. My concept of an Access Port is very simple and inexpensive and would be readily achievable by all CPE except possibly very small telephones. This letter is not as detailed as reference # three above. I urge you to read reference # three posted on the FCC web site, or I will be happy to send you a copy.

I would be pleased to offer additional explanations from the perspective of a hard of hearing person on any of the concerns above. I realize that I am asking for more than what seems to be required by the Guidelines and the NPRM. I am not asking for the impossible and I believe the common sense definition of readily achievable will cover my requests.

Any person known to be a great communicator, such as a Congressman, doctor, college professor, lawyer, FCC Chairman, or even the President, could suddenly find himself or herself in a situation where telecommunications is difficult or impossible. Think about what that would do to a person's future effectiveness in office or as a CEO of a large corporation. The ADA can only go so far in restoring a person to a great communicator status. The Telecommunication Act of 1996 can go even further if it is implemented with imagination with its focus on people with disabilities rather than on telecommunication service providers and CPE manufacturers. I trust that you agree with this statement even though I may not have explained my other points well enough. I ask that you establish a dialog with the FCC chairman, William E. Kennard, to work toward this end. I am available for any assistance I can give and I am looking forward to your response.

Sincerely,

Ronald H. Vickery
404 Benton Dr.
Rome, Georgia 30165

Ron.Vickery@ibm.net
706 802-1761